FRED H. GAGON ET AL.

IBLA 93-336 Decided January 31, 1996

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring mining claims null and void ab initio. UMC 144289 -
UMC 144298.

Dismissed.

1. Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Reclamation Withdrawals

   Mining claims located on public lands at a time when they are withdrawn from location of mining claims pursuant to a first form reclamation withdrawal are properly declared null and void ab initio.

2. Res Judicata--Rules of Practice: Appeals: Dismissal

   The principle of res judicata and its administrative counterpart, the doctrine of administrative finality, precludes reconsideration of a final Departmental decision issued to a party or his predecessor-in- interest in the absence of a showing of compelling legal or equitable reasons.

APPEARANCES: Fred H. Gagon and Hugh W. Gagon, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

This appeal has been brought by Fred H. Gagon and Hugh W. Gagon from a decision of the Utah State Office, Bureau of Land Management (BLM), declaring certain mining claims 1/ null and void ab initio. The BLM decision

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1/ The claims were identified as follows:

UMC Numbers	Mining Claim Names
144289 - 144290	Hanging Bridge 1 - 2
144291 - 144294	Harris 1 - 4
144295 - 144298	Colorow 1 - 4

Appellants indicate in their statement of reasons (SOR) for appeal that they are the lessees of the owners of the claims (SOR at 6, 11). Thus, appellant's interest in the claims stems from the locators and their successors-in-interest.

recited that the land on which the claims were located was withdrawn from mineral entry in a first form reclamation withdrawal in November 1917 for the Colorado River Storage Project. Further, BLM noted that the claims at issue were located thereafter on October 24, 1919, at a time when the lands were withdrawn. Finally, BLM noted that these claims had previously been held to be null and void in a final Departmental decision dated March 15, 1956.

In their SOR, appellants assert that the claims have been held in open and notorious possession by the original owners and their heirs and assigns. It is contended that the doctrine of laches bars BLM from declaring the claims invalid after this length of time. Appellants also challenge the decision on ground of due process asserting the right to an appeal and a hearing.

[1] It appears from the record in this case that the lands embraced in the location of these claims were withdrawn from entry under the mining laws pursuant to a first form reclamation withdrawal under authority of the Reclamation Act of June 17, 1902, ch. 1093, § 3, 32 Stat. 388, repealed in part, Federal Land Policy and Management Act of 1976, section 704(a), 90 Stat. 2792. This withdrawal was approved by the First Assistant Secretary of the Department of the Interior on November 6, 1917. It is well established that a mining claim located on a date when the lands are subject to a first form reclamation withdrawal is null and void ab initio. Glenn Freeman, 116 IBLA 105 (1990); William B. Rawlings, 85 IBLA 243 (1985); William C. Reiman, 54 IBLA 103 (1981); Sam McCormack, 52 IBLA 56 (1981).

[2] As noted above, appellants' interest in these claims derives from the owners of the claims. Thus, appellants are appealing the rights of the locators of the claims and their successors in interest and stand in no better position than the claim owners. However, the BLM decision recites and the record supports a finding that these claims were the subject of a final Departmental decision finding the claims null and void ab initio on the ground that the lands were withdrawn within a first form reclamation withdrawal and not open to location of mining claims at the time the claims were located. R. J. Walter, A-27243 (Mar. 15, 1956). 2/

2/ One of the arguments expressly rejected in that decision was the contention that because these mining claims for an oil deposit were relocated in 1950 and 1953 after termination of the 1917 withdrawal, the claims were valid. Noting that these mining claims were apparently located for deposits of oil, the decision pointed out that shortly after location of these claims on withdrawn lands, deposits of oil were precluded from location under the Mining Laws and made subject to mineral leasing. Mineral Leasing Act of 1920, 30 U.S.C. § 181 (1994). While there was an exception for valid claims located prior to enactment of the Mineral Leasing Act, 30 U.S.C. § 193 (1994), the decision noted that this was inapplicable in that the original locations of the claims at issue here were made at a time when the land was withdrawn.

The doctrine of res judicata generally precludes a party from raising an issue relevant or related to a claim ruled upon in a prior judgment between the parties because the claim has been merged in the judgment and, hence, no longer exists. Lloyd D. Hayes, 108 IBLA 189 (1989); Turner Brothers, Inc. v. OSMRE, 102 IBLA 111, 120 (1988); see Kaspar Wire Works, Inc. v. Leco Engineering & Machine, Inc., 575 F.2d 530, 535 (5th Cir. 1978); 50 C.J.S. Judgments § 593 (1947); 46 Am. Jur. 2d Judgments §§ 383, 397, and 404 (1969). The principle of res judicata has been held applicable to administrative proceedings when an administrative agency, acting in a quasi-judicial capacity, resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate. United States v. Utah Construction & Mining Co., 384 U.S. 394, 422 (1966); Turner Brothers, Inc. v. OSMRE, supra at 121; 4 Davis, Administrative Law Treatise § 21:2 (2d ed. 1983). As a general rule, the administrative counterpart of the principle of res judicata--the doctrine of administrative finality-- precludes reconsideration of a decision of an agency official when a party, or his predecessor-in-interest, had an opportunity to obtain review within the Department and the final administrative decision of the Department was adverse to the claimant. 3/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the subject appeal is dismissed.

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C. Randall Grant, Jr.
Administrative Judge

I concur:

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John H. Kelly
Administrative Judge

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3/ The rule is not absolute because the decisions of Departmental administrative officials, as well as decisions of the Board, are made pursuant to authority delegated by the Secretary of the Interior. The Secretary or those exercising his delegated authority may review a matter previously decided and correct or reverse an erroneous decision. See Gabbs Exploration Co. v. Udall, 315 F.2d 37, 40 (D.C. Cir. 1963), cert. denied, 375 U.S. 822 (1963); 50 C.J.S. Judgments § 606 (1947). Reexamination of a decision which has become final is available only upon a showing of compelling legal or equitable reasons, such as a violation of basic rights of the parties or the need to prevent an injustice. Turner Brothers, Inc. v. OSMRE, supra at 121; Village of South Naknek, 85 IBLA 74 (1985); Lillian Barlow, 58 IBLA 385 (1981). No such showing has been made in the context of this case.